

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review	)	
	)	
Florida Community College at Jacksonville	)	File No. SLD-300894
Jacksonville, Florida	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: April 13, 2005**

**Released: April 13, 2005**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Florida Community College at Jacksonville, Florida (Florida College).<sup>1</sup> Florida College seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). SLD denied Florida College's Funding Year 2002 application for discounted services under the schools and libraries universal service mechanism on the grounds that the recipient, a community college, is an ineligible entity under program rules.<sup>2</sup> For the reasons set forth below, we find that Florida College does not satisfy the statutory definition of schools that are eligible for discounts. We therefore deny its Request for Review.

2. Only eligible schools and libraries may receive universal service funds under the schools and libraries universal service mechanism.<sup>3</sup> To be eligible, a school must meet the statutory definition of "elementary school" or "secondary school" contained in the Elementary and Secondary Education Act of 1965 (Education Act), as amended in the No Child Left Behind Act of 2001 (No Child Left Behind Act).<sup>4</sup> Under the No Child Left Behind Act, an "[e]lementary school" is defined as "a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as

<sup>1</sup>Letter from Dr. Steven Wallace, Florida Community College at Jacksonville, to Federal Communications Commission, filed December 6, 2002 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup>Letter from Schools and Libraries Division, Universal Service Administrative Company, to Susan Lehr, Florida Community College at Jacksonville, dated October 8, 2002.

<sup>3</sup>47 C.F.R. § 54.501. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9066 (1997) (subsequent history omitted).

<sup>4</sup>47 U.S.C. §§ 254(h)(4), 254(h)(7)(A), as amended, The No Child Left Behind Act, Pub. L. 107-110, § 901, 115 Stat. 1425, 1956 (2002) (codified at 20 U.S.C. §§ 7801 (18), (38)), Pub. L. 106-554, § 1606(a), 114 Stat. 2763, 2763A-334 (2000) (redesignating paragraphs (15) through (29) as paragraphs (16) through (30), respectively; Charter School Expansion Act of 1998, Pub. L. 1-5-278, § 3(j), 112 Stat. 2688 (Oct. 22, 1998).

determined under State law.”<sup>5</sup> A “[s]econdary school” is defined as “a nonprofit institutional day or residential school, including a public elementary charter school, that provides secondary education, as determined under State law.”<sup>6</sup> The term “secondary school” does not include any education beyond grade 12.<sup>7</sup>

3. Florida College filed an application with SLD for discounted telecommunications and Internet access services for Funding Year 2002.<sup>8</sup> During the review of this application, SLD determined that Florida College provides a variety of K-12 instruction at each of its six campus sites to approximately 14,206 K-12 students out of a total of 55,656 students enrolled at Florida College.<sup>9</sup> SLD also determined that out of 263 classrooms on three of Florida College’s campus sites, 119 are used for K-12 education.<sup>10</sup> Because Florida College also provides postsecondary education at each of its campuses, however, SLD denied the application, finding that a significant portion of each funding request was for an entity not eligible to receive funding.<sup>11</sup>

4. In the instant Request for Review, Florida College argues that its funding request should not be denied without taking into account state law authorizing it to provide secondary education and vocational instruction.<sup>12</sup> Florida College asserts that state law assigns equal responsibility and jurisdiction to both community colleges and school districts to serve the same population of eligible students.<sup>13</sup> As a local education agency, Florida College asserts that it provides free, public secondary education and vocational certificate programs, where instruction is delivered at or below the 12th grade level.<sup>14</sup> Florida College further argues that by refusing to consider Florida law, SLD disenfranchises half of Florida’s

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<sup>5</sup>20 U.S.C. § 7801(18).

<sup>6</sup>20 U.S.C. § 7801(38).

<sup>7</sup>*Id.*

<sup>8</sup>FCC Form 471, Florida Community College at Jacksonville, Jacksonville, Florida, filed January 17, 2002.

<sup>9</sup>Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kem Siddons, Florida Community College at Jacksonville, dated October 8, 2002 (Further Explanation of Administrator’s Funding Decision).

<sup>10</sup>*Id.*

<sup>11</sup>Letter from Schools and Libraries Division, Universal Service Administrative Company, to Susan Lehr, Florida Community College at Jacksonville, dated October 8, 2002 (Funding Commitment Decision Letter); Further Explanation of Administrator’s Funding Decision.

<sup>12</sup>*See* Request for Review at 2.

<sup>13</sup>*Id.*

<sup>14</sup>*See id.* at 3. A “local education agency” is a school district or a community college. *See* Fla. Stat. § 239.105(21). According to Florida College, adult general studies (which includes high school students) and/or vocational technical studies are offered by the school districts in some areas of the state and by the community college in other areas of the state. Request for Review at 3.

eligible students.<sup>15</sup> Thus, Florida College states that the Commission has the authority and the obligation to rule in support of providing discounts for eligible students under Florida's laws.<sup>16</sup>

5. After reviewing the applicable law and the underlying record, we find that Florida College does not provide "secondary education" under the Education Act, as amended in the No Child Left Behind Act, because Florida College's curriculum includes education beyond grade 12. Section 228.041(1)(a) of the Florida Statutes provides that "public schools shall consist of kindergarten classes; elementary and secondary school grades and special classes; adult, part-time, vocational, and evening schools, courses, or classes authorized by law to be operated under the control of school boards; and developmental research schools to be operated under the control of the State University System."<sup>17</sup> Section 228.041(5) further defines the term "school" as an "organization of pupils for instructional purposes on an elementary, secondary, or other public school level, approved under regulations of the Commissioner of Education or state board."<sup>18</sup> Finally, the term "community college" is defined as any "educational institution which [. . .] offer[s] courses and programs of general and academic education *parallel* to that of the first and second years of work in institutions in the State University System of career education and of adult continuing education."<sup>19</sup>

6. Turning to the merits of the instant Request for Review, we recognize that, in addition to traditional college credit course work, Florida law also allows community colleges to provide adult secondary education, which includes instruction at or below the 12<sup>th</sup> grade level.<sup>20</sup> We also recognize that Florida College is charged with providing free, public secondary education and vocational certificate programs for students residing in Duval County, Florida.<sup>21</sup> The primary mission and responsibility of community colleges in the state of Florida, however, is "responding to community needs for *postsecondary* academic education and *degree career education*."<sup>22</sup> As discussed above, only educational entities meeting the statutory definition of "elementary school" or "secondary school" are eligible for discounts.<sup>23</sup> Florida College does not satisfy either definition.<sup>24</sup> We do not doubt that the existence of Florida College results in an improved educational experience for students in Jacksonville, Florida. However, the provision of discounted services for entities such as community colleges is beyond the scope of our statutory authority and would divert support from the program's intended beneficiaries.

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<sup>15</sup>Request for Review at 4.

<sup>16</sup>*Id.*

<sup>17</sup>See Fla. Stat. § 228.041(1)(a).

<sup>18</sup>See Fla. Stat. § 228.041(5).

<sup>19</sup>See Fla. Stat. § 228.041(1)(b) (emphasis added).

<sup>20</sup>See Fla. Stat. § 240.301(1)(b).

<sup>21</sup>See Request for Review at 2.

<sup>22</sup>See Fla. Stat. § 240.301(3) (emphasis added).

<sup>23</sup>47 C.F.R. § 54.501.

<sup>24</sup>See *Request for Review by New Haven Adult Education Center, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-330527, CC Docket Nos. 96-45 and 97-21, Order, 19 FCC Rcd 8895 (Wireline Comp. Bur. 2004).

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Florida Community College at Jacksonville, Jacksonville, Florida, on December 6, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson  
Deputy Chief  
Telecommunications Access Policy Division  
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